IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2354 OF 2003
IN
SUIT NO.2497 OF 2003

Mazda Theatre (P) Ltd. ..Plaintiffs

Vs.

Yeshwant Singh G.Mangaldas & Ors. ..Defendants

Mr.A.G.Damle for the plaintiffs

Mr.Girish Godbole for the defendant no.1, 3 and 4

CORAM : S.U.KAMDAR, J
DATED : 24TH JANUARY, 2006

P.C.:

1. The present suit is filed for specific performance of an agreement which is evident from the draft conveyance forwarded by the plaintiffs to the defendants. The said draft conveyance has been approved by the defendants however, subject to deletion of clause no. 5 thereof. It is also not in dispute that the total consideration for sale of the said property was sum of Rs.25 lacs and sum of Rs.2,50,000/- was paid by plaintiffs to defendants. The said cheque has been encashed. Thus, it is clear that there was a concluded contract arrived

at between the parties though conveyance is not formally executed by them. The only dispute was whether right to use the passage as contemplated under clause 5 should be granted to plaintiffs or not. However, subsequently, defendants has refused to perform their part of obligation under the contract and thus, the present suit is filed for specific performance thereof.

2. An ad interim order was granted on 26.8.02 interalia restraining the defendants from disposing of property excluding the bracketed portion. In my opinion, on the facts of the present case where there is no serious dispute about the finalisation of agreement, save and except dispute as to the clause 5 of the contract which pertained usage of the passage. In my opinion, even if the case of the defendants is accepted still an agreement excluding clause 5 can always be performed. Thus, prima facie there is an agreement between the parties which has been concluded and thus, a prima facie case bas been made out for grant of injunction However, such injunction cannot be granted unless plaintiffs are directed to deposit

in this court a further sum of Rs.15.0 lacs. The learned counsel for the plaintiffs states that he will deposit the said amount within 8 weeks from today. If such amount is so deposited, ad interim order dt.26.8.05 to stand confirmed.

3. If the said amount is not so deposited, the present notice of motion to stand dismissed. If the said amount is deposited the Prothonotary and Senior Master is directed to invest the same in any Nationalised Bank in Fixed Deposit initially for a period of 3 years and then renew the same from time to time till further orders of this court. Motion disposed of accordingly. No order as to costs.